

Prizewinning Dissertation 2018

No.18-LS

A Feminist Perspective On Burundi's Land Reform

Ladd Serwat

Published: February 2019

Department of International Development

London School of Economics and Political Science

Houghton Street

London

WC2A 2AE UK

Tel: +44 (020) 7955 7425/6252

Fax: +44 (020) 7955-6844

Email: d.daley@lse.ac.uk

Website: <http://www.lse.ac.uk/internationalDevelopment/home.aspx>

Candidate Number: 82460

MSc in African Development 2018

Dissertation submitted in partial fulfilment of the requirements of the degree

A Feminist Perspective On Burundi's Land Reform

Word Count: 9989

ABSTRACT

This paper draws on feminist institutionalism on power dynamics and critical junctures to examine the effects of overlapping neocustomary and formal-legal land tenure institutions. While land reform has brought services closer to the local population through decentralisation, land registration allows for unequal power dynamics to restructure land tenure patterns. Using a mixed-methods approach, this paper argues the registering of land creates opportunities for more powerful actors to improve their own land tenure at the expense of those with less power. In Burundi, land reform in provinces of Makamba and Ngozi have shown a subsequent pattern of reduced female land tenure.

ABBREVIATIONS

ARUSHA - Arusha Peace and Reconciliation Agreement for Burundi

CNDD-FDD – Le Conseil National Pour La Défense De La Démocratie-Forces De Défense De La Démocratie

CNTB - Commission Nationale de Terres et d’Autres Biens

CSTB - Cour Special de Terres et d’Autres Biens

INGO – International Non-Government Organisation

LTR- Land Tenure Regime

NGO – Non-Government Organisation

NIE – New Institutional Economics

SFC - Communal land registration office or Services Fonciers Communaux

UN – United Nations

ZOA – Dutch Christian Aid Organisation

ACKNOWLEDGEMENTS

I thank God for providing unconditional love and the opportunity to study a topic I am passionate about. Thank you to my friends, family and wife, Carley, in Burundi and around the globe who have offered the support and guidance in writing this paper. Our community at LSE has been amazing and you each play a pivotal role in my life. Benjamin Chemouni, you have been a blessing and I appreciate your interest and expertise. This paper is dedicated to the countless Burundians who have been challenged with disputes over land.

TABLE OF CONTENTS

1. Introduction	5
1.1 Background of Decentralised land administration.....	5
1.2 Research Gap.....	5
1.3 Introduction to the Burundian Case	6
1.4 Argument	6
1.6 Structure	7
2. Analysing The Effects Of Land Reform	7
2.1 Feminist Institutionalism.....	7
2.2 African Land Tenure Regimes	11
3. Methodology and Limitations.....	12
3.1 Study Location.....	13
3.2 Analysing Land Tenure.....	14
3.3 Limitations.....	15
4. Burundian Land Tenure Regime.....	15
4.1 Customary and Neocustomary Institutions.....	16
4.1.1 The Precolonial and Colonial Era.....	16
4.1.2 Neocustomary Institutions In The Present.....	17
4.2 Formal-Legal Institutions.....	19
4.2.1 Colonial Era.....	19
4.2.2 Independence Era To Arusha.....	19
4.2.3 From Arusha To the Present.....	20
5. Land Reform's Effects On Women In Ngozi and Makamba.....	23
5.1 From Neocustomary To Formal-Legal Tenure.....	23
5.2 Continued Formal-Legal and Neocustomary Overlap.....	25
5.3 Women's Land Tenure On Purchased Land.....	27
5.4 Women On Family Land.....	28
6. Analysis.....	29
7. Conclusion.....	30
8. References	31
9. Appendix.....	41
9.1 List of Interviews.....	41
9.2 Focus Group 4 Questions To Guide Conversation.....	42

1. Introduction

1.1 Background Of Decentralised Land Administration

Land is a crucial issue in the numerous agricultural and natural resource economies of Africa, yet land rights remain weak and formal registration low (Boone, 2014; Kevane, 2014). Many African governments have undergone decentralised land reform in recent decades seeking to strengthen land tenure institutions, improve service provision, increase social cohesion, reduce conflict and improve local governance (Ansoms and Hilhorst, 2014; Faguet and Pöschl, 2015; Wily, 2003). Specifically, informal tenure may allow for an overabundance of land-related disputes, decrease incentives to make long-term investments, limit land-backed security for loans and decrease the land rental market in fear of losing one's land (Kevane 2014, 103). The promotion of formal land rights has often not replaced neocustomary regimes but resulted in an institutional overlap across much of Africa (Boone, 2014).

Women face a number of unique challenges within overlapping neocustomary and formal-legal land tenure, where neocustomary norms frequently prevent female land ownership, gendered inheritance rights, and lack of female participation decision making (Kevane, 2014: 88). Decentralisation of land administration and increasing land tenure have sought to improve women's land security, where women face challenges in both accessing land and holding land. Many New Institutional Economics and feminist scholars support land reform, arguing for the positive effects of providing formal land rights to women (Besley and Ghatak, 2010; de Soto, 1989; Hoddinott and Haddad, 1995; North, 1991; Khan, 2009; Quisumbing, 2003; Whitfield, 2015).

1.2 Research Gap

Academics and policy makers commonly mention improving land tenure for women as an effect of decentralised land administration and registration in the Great Lakes Region of Africa, but this gap is still left unconsidered in much of the literature. Do land registration and decentralised land administration improve women's land tenure in the Great Lakes? What are the effects of Burundi's recent land reform in regard to female land tenure? Within the overlapping LTR regimes in many parts of SSA, several institutional actors may have jurisdiction to resolve land disputes, which may produce varied results for women and men. Ansoms and Hilhorst

identify these questions, among other gendered effects of the changing LTR in the Great Lakes, as a growing research gap (2014: 204-207).

1.3 Introduction to the Burundian Case

Since the Burundian peace process in 2000, the Arusha Peace and Reconciliation Agreement for Burundi (Arusha) has outlined the decentralisation of land administration to overcome the historic challenges of land-related conflict and accommodate returning refugees (Arusha Peace and Reconciliation Agreement for Burundi, 2016). Various land administration reforms followed Arusha, such as land titling projects, creation of provincial land administration offices and the establishment of special commissions for refugee land to improve service provision, decrease land-related conflicts, improve female land ownership and allow title-holders the benefits of land-related credit (World Bank, 2014). The Burundian economy deeply relies upon agriculture, with around 90% of the population engaging in subsistence farming and only 10% of the population living in urban areas (ICG, 2014). A growing population under demographic pressure compounds Burundi's agricultural dependence, with average farm size currently around one and a half acres and shrinking (ABELO, 2014: 8). Other challenges include ongoing political tension and handling refugee repatriate claims to land (Ibid). Women face a number of complicated challenges in this environment, where neocustomary land tenure does not permit female landholders in most cases along with socio-economic and political factors impeding land ownership through formal-legal tenure.

1.4 Argument

This paper examines the overlap of neocustomary and formal-legal land tenure institutions and considers their implications for women in particular. The theoretical framework for this paper draws on a feminist institutionalist perspective on power dynamics and critical junctures. While land reform has brought services closer to the local population through decentralisation, this paper argues that the critical juncture of land registration allows for unequal power dynamics to restructure land tenure patterns. Registering land and offering titling services alone does not simply codify neocustomary land tenure into formal-legal tenure, where the outcome of registration results in the same tenure patterns. Instead, the registration process creates an opportunity for more

powerful actors to improve their own land tenure at the expense of those with less power. In Burundi, this has resulted in a subsequent pattern of reduced female land tenure. This systematically exploits women as primary and secondary landholders while providing their husbands or male relatives increased bargaining power in the household and within neocustomary and formal-legal institutions concerning land disputes, especially contestation over inheritance. Variation in these patterns exists depending on intra-household power dynamics between the husband and wife and external interventions which may change incentives and subsequent behaviour patterns. Importantly, this paper raises awareness for policy makers and governments supporting land reform as a tool for improving women's land tenure of the unintended consequences without proper safeguarding.

1.6 Structure

Section 2 considers the existing literature and presents definitions important to this paper. Section 3 lays out the methodology for the paper and in Section 4, the paper examines the historical Burundian experience of land tenure. Section 5 presents the current decentralisation of land reform and its effect on women in Makamba and Ngozi. Section 6 analyses land reform in light of the argument and theoretical model before Section 7 concludes.

2. Analysing The Effects of Land Reform

2.1 Feminist Institutionalism

Scholars have taken different viewpoints in explaining the effects of land reform. Some academics have focused on a legal perspective, framing the land reform analysis in legal changes which have occurred from the neocustomary regime. Early scholarship on land reform often took the legal perspective, with land rights lawyers arguing for the merits of various models of land registration to resolve land disputes (O'Connor, 2018). This view pays close attention to the legal framework and its implications for landholders. However, this analysis often fails to understand the broader institutional narrative, economic drivers and common deviations from the letter of the law. Political science has made key contributions to the debate, analysing the political relationship to land reform (Boone, 2014; Berry, 1993 Wily, 2003). Importantly, these authors have recognised the politicisation of rural space, diverging from popular views of an uncaptured countryside

(Herbst, 2000). Economic perspectives, particularly New Institutional Economics (NIE), have been the major driving force for more recent land reform in many developing countries, with arguments for land as an economic instrument in the market economy, in favour of market efficiency and wealth maximisation (O'Connor, 2018).

This paper takes a feminist institutionalist approach in understanding the gendered effects of land reform. Feminist institutionalism pays attention to mapping the formal and informal architecture, rules, norms, and practices of particular institutions and the ways these rules affect women in particular (Kenny, 2014: 679). Complex relationships between institutions are “proximate and distant, contemporary and historical” and shape gendered patterns of power (Burns, 2005: 139). Following North (1991), this paper defines institutions as the “rules of the game” while also recognizing ways these institutions may create and perpetuate unequal or discriminatory practices against those with less power, often women.

Both neoclassical economists and feminist institutionalism agree that “individuals make choices and exercise agency within the limits imposed by their personal circumstances” (Kabeer, 2016: 297). However, feminist institutional authors highlight structural challenges in norms, rules, resources and identities (Kabeer, 2016; Folbre, 1994; Whitehead, 1979). Gender relations, the interactions of power between women and men, are largely socially constructed and exhibit a great deal of variation across societies and time (Agarwal, 1997). This variation in power relations creates variation in household behaviour at multiple levels of analysis. This paper follows Foucault in taking a broad view of power, where “power is everywhere” and may be visible, invisible or hidden (Freire, 2001; Foucault, 1991).

Land reform refers broadly to the process of change concerning land tenure, yet these changes often vary across space and time (Lipton, 2009). Land reform often includes the establishment or broadening of land registration and are often part of a broad land administration project, where land administration refers to “recording and utilising information about the ownership, value and use of land for the purpose of managing a country’s land resources” (O'Connor, 2018: 34). Reform in land administration and registration are “part of a broader process of institutional change” to support land markets through improving legal, political and economic institutions (O'Connor, 2018: 35). While recognising more specific types of redistributive, market and legal definitions of reform, this paper maintains a broad definition of land reform which includes both descriptive and prescriptive definitions.

Governments have undergone land reform throughout Africa, where colonial regimes introduced unequal institutions of land governance which gave preference to European colonisers and state lands (Holden and Otsuka, 2014; Wily, 2003). While some of these colonial regimes have continued into the present, land reform in the post-colonial era has varied tremendously, where some countries have abolished private ownership in favour of state ownership, others have eliminated customary land holdings, while others have transitioned to hybrid models with a variety of land tenure arrangements (Wily, 2003).

An important aspect of land reform in Africa, as in other regions, includes the decentralisation of land governance (Wily, 2003; World Bank, 2014). Proponents of decentralisation have argued for the need to improve efficiency, responsiveness and flexibility (Faguet and Pöschl, 2015; Oates, 1998). Others have been more critical, where decentralisation *per se* may not lead to these desired effects or may produce negative effects (Treisman, 2007). While decentralising land administration may increase the land registered and decrease the travel costs for rural property owners when using local land services, it may also create bureaucratic overlap, permit elite capture or move conflict closer to the rural area (Ibid). This paper follows Faguet and Poschl's definition of decentralisation as "the devolution by central (i.e. national) government of specific functions—with all of the administrative, political, and economic attributes that these entail—to regional and local (i.e. state/provincial and municipal) governments that are independent of the centre within given geographic and functional domains" (Faguet and Poschl, 2015: 3). Decentralisation of land administration varies in its design and can change over time, from decentralisation and centralisation to devolution and delegation (Rondinelli et al. 1983), with some governments allocating full political, contractual and economic decision making and authority to the local level while others retain various authority centrally.

This paper analyses land reform as a critical juncture in the path-dependence of institutions (David, 1994; North, 1990). Institutions exhibit path dependence, whereby their nature they sustain themselves, create positive feedback and limit change to decrease transaction costs (Mahoney, 2000; Pierson, 2000). Critical junctures refer to moments of fluidity where the decisions of more powerful actors create developmental changes in institutions (Capoccia and Kelemen, 2007). This fluidity permits alteration to gendered power dynamics and subsequent "lock-in", or path dependence, creates a point of important analysis.

A key assumption of recent land reforms is the deviation from former economic models of a unitary household (Becker, 1965; 1981) towards collective, cooperative, non-cooperative or hybrid models of the household (Doss, 1996; Haddad et al, 1994; Strauss and Thomas, 1995). This recognises gendered differences between men and women in decision making, where improving land tenure for women increases intra-household bargaining power. Increased intra-household bargaining power may provide opportunities to improve spending patterns away from consumption, pride-based spending and adult goods towards more productive spending on areas such as children's school fees, nutritious food and agricultural inputs (Agarwal, 1997).

Supporting the NIE perspective to reform Africa's LTR is a particular view of capitalist transformation which sees the need to move the majority of population away from low productivity agriculture governed by overlapping formal-legal and neocustomary property rights into more productive areas of the economy (Brenner, 1976; Wood, 2002, Khan, 2009). These authors see capitalist transformation not as random or spontaneous but the outcome of changes in "rights over resources and assets, especially land" (Whitfield, 2015: 15). Land reform advocates point to theoretical arguments based on individual property rights leading to optimal investment levels when there are functioning markets. Besley and Ghatak (2010) discuss a 'security' or 'assurance' effect where rural landholders have increased incentives to invest in their land when they are confident their property has protection from expropriation through well-defined and secure property rights. These rights allow landholders confidence in making investments with long-term benefits and that future generations may inherit both the property and enjoy the long-term benefits. Additionally, 'gain from trade' create positive effects with the introduction of land markets, where farmers with a comparative advantage may access sufficient amounts of land and increase their investment (Besley and Ghatak, 2010). Lastly, de Soto (2000) finds farmer benefits from using their property as a financial instrument as collateral for credit. While this paper does not disagree with these arguments in favour of land reform, a feminist-institutional lens asks, "are the benefits captured equally by both women and men?" and "how do power dynamics within and between institutions create gendered differences?"

2.2 African Land Tenure Regimes

Land tenure regimes vary greatly across the continent, as well as sub-nationally, with a variety of smallholders, large landed estates, free-hold, lease-hold, state-owned land and other country-specific examples (Kevane, 2014). Land tenure regimes (LTR) “define the manner and terms under which rights in land are granted, held, enforced, contested or transferred” (Boone 2014, 4). Rights are the control over land use, restriction, sale, transfer and lease, as well as the returns from these assets upon improvements and production (Rodrik, 2000). LTR rely upon third-party enforcement, often a state actor through legal and physical force, creating a political relationship between parties which claim rights to the actors which enforce these rights (Boone, 2014: 4). Land deeply shapes the economic opportunities of agrarian societies, making LTR a crucial economic institution (de Soto, 1989; North, 1990). Lastly, the shape and distribution of land rights are embedded in social relations (Fraser, 1989; Phillips, 1998).

Thus, land tenure regimes have a relationship with social, political and economic institutions, yet both feminist institutionalism and political science recognise that these are not clearly explained by dichotomies such as customary or legal, nor formal or informal (Boone, 2014; Phillips, 1998; Randall, 2002). The colonial period deeply altered customary institutions in many parts of Africa and are better characterised as neocustomary (Boone, 2014; Lemarchand, 1970; Mamdani, 1996). The classifications of “formal-legal” and “neocustomary” are used as categories to aid in analysis, recognising the limitations of these labels and the interconnectedness of the various institutions. Amadiume argues that colonialism introduced “a new gender politics” which exploited women in favour of men while upsetting the traditional institutions which balanced power politics between men and women (1997: 105). Colonisers introduced and perpetuated European, patriarchal models of gender relations in the African colonies, creating a society based on a hierarchy of race, ethnicity and gender (Daley, 2007: 29). This hierarchy created a complex system of white male privilege over white female privilege but placed whites over non-whites and further racial-ethnic hierarchies between groups of African peoples (Ibid). Customs, ethnicities and races were often the product of European fabrication or alteration (Mamdani, 1996). This complex hierarchy requires intersectional analysis, recognising differences in power between layered identities (Crenshaw, 1989). Absent clarity between institutions and deep changes during colonialism which continues to the present, more powerful actors use opportunities to exploit those less powerful.

Institutional overlap and lack of clear authority provides an opportunity for “forum shopping,” where an actor may bring a land grievance to the particular institution most likely to provide the desired outcome, with further decisions taken up to higher courts, parallel courts or local elders without clear hierarchy in these decisions (Juenger, 1988; Kohlhagen, 2011; Whytock, 2010). While institutional forum shopping may provide citizens with certain benefits such as choosing the best functioning institution, this does not take into account unequal power dynamics between parties involved (Meinzen-Dick and Pradham, 2002: 5; Whytock, 2010). Choosing a particular institutional forum may be made based on preferential legal precedent, cost, partiality and cultural norms (Whytock, 2010). Certain courts or further decisions in favour of or against a case may provide additional credibility, allowing more powerful actors to bring more decisions in their favour (Theron, 2009: 8). In other cases, formal-legal cases offer further credibility, but also are more expensive, excluding the poor from utilising their services (Ibid). Forum shopping often marginalises women, where neocustomary instructions are traditionally discriminatory towards female landholders while the costs of formal-legal courts restrict access to their services, despite often offering further provisions for female ownership (Anying and Gausset, 2017).

3. Methodology and Limitations

This endeavour takes a mixed methods approach, drawing on qualitative primary and secondary research and quantitative secondary research to analyse the gendered effects of land reform in Burundi. The research uses a “typical” case study design, useful in investigating “a contemporary phenomenon with its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin, 2003: 13). Provinces, communes and hillsides provide sub-units of analysis where subnational variation or uniformity allow for within-case analysis, between-case analysis and cross-case analysis (Ibid). This research is primarily “X-centred”, useful in hypothesis generation and analysing the effects of a causal factor, namely, the effects of land reform in Burundi (Gerring, 2007: 71). The case study is “bound” to the recent reform in Burundi following Arusha to the present and its specific effects on female landholders (Teddlie and Tashakkori, 2009; Yin, 2003). Feminist institutionalist theory highlights the case concerning the role of women, the dynamics of power and how reform may be examined as a critical juncture (Kabeer, 2016; Folbre, 1994; Whitehead, 1979).

Following Teddlie and Tashakkori (2009), this study began with an inference process of conceptualising the research purpose and questions. Next, an observational stage consisted of a review of relevant literature, interviews with key stakeholders and a collection of data from academic and grey literature. Primary fieldwork consisted of semi-structured interviews with NGOs involved in land reform and a focus group of land rights lawyers working in the National Land Titling Office. This fieldwork revealed several themes of gender-related challenges concerning land reform and allowed for deeper secondary research of these issues. Lastly, the inferential stage developed conclusions and examined the findings in relation to broader phenomena.

Burundi represents an interesting and generalisable case study due to ongoing land reform and the process of decentralisation of land administration, beginning with constitutional changes at Arusha. This land reform broadly reflects African experiences more generally, where the process of reform has left countries with a patchwork of overlapping legal and neocustomary tenure (Boone, 2014; Wily, 2003). Additionally, a variety of donors support this process with different geographic and ideological focus, creating subnational variation in the extent of reform, quality and local administrative capacity.

3.1 Study Location

Ngozi and Makamba are two regions of Burundi which have experienced the most widespread rural land reform. Several international financial partners have provided support for the Swiss Development Cooperation in Ngozi and ZOA in Makamba. These two provinces have undergone more systematic registration, unlike many other provinces which have undergone sporadic or user-centric registration. These regions were chosen due to the availability of information both in academic and grey literature, as well as the two provinces representing a similar



Figure 1-Retrieved from <https://fr.dreamstime.com/illustration-stock-carte-du-burundi-image94445171>

overlap of neocustomary and formal-legal land tenure. Field research took place in December 2017 in Bujumbura due to the prevalence of NGOs and government offices in the capital. These interviews draw on prior field experience from September 2012 to June 2014 and May-June of 2016. A Burundian research assistant aided with some interviews and the focus group, trained at the University of Burundi. Interviews and focus groups were conducted in English, French or Kirundi with the author's translation to English, depending on the preference of the participant with ethical approval from the London School of Economics. Due to the political and sensitive nature of land reform in Burundi, all interviewees asked to remain anonymous.

3.2 Analysing Land Tenure

Measuring and analysing female land tenure may be conducted in a variety of ways. One method includes analysing the legal provision of land tenure rights to women. Neocustomary decisions and former formal-legal land laws may exclude female landholders, thus this step is an important part of analysis. An additional method examines the inclusion of women on formal documentation such as land titles and certificates. Exclusion of women from these documents restricts land tenure and use, even if legal provision for ownership exists. Further methods may include analysing ways in which land registration provides improved social, economic and political opportunities. This study pays particular attention to the inclusion of women on formal documents in both sole and joint ownership on land titles and certificates. Without this step, land reform may codify or decrease tenure from former neocustomary patterns of ownership by excluding women from formal documents. While this paper considers neocustomary and formal-legal laws and norms into account, the strict application of this method ignores how these decisions impact female landholders. Further research concerning the subsequent use of formal documents is limited due to the lack of statistical information, limiting the feasibility of this method within the timeframe of this paper.

Efforts are made to triangulate data wherever possible to account for potential bias and error between NGO data, government data and interviews with key stakeholders. NGOs have provided the majority of statistics and data on land reform in Burundi, but suffer from inherent bias in offering favourable data to for donors. Many of the available studies lack large-N research necessary to make broader generalisations, but small-N studies provide a further depth of

knowledge which broader studies may neglect (Collier 1993). NGO data is cross-referenced with monitoring and evaluation documents, government statistics or scholarly articles when possible.

3.3 Limitations

While Burundi exhibits a number of generalisable traits, some limitations ought to be considered. The country's limited geographic size and high demographic pressure have contributed to a long history of land-related conflict (Lemarchand, 1970; Watt, 2008). Land is scarcer than in many other African countries, which may have an effect on the outcome of land reform and the ability of African governments to delegate central power to rural space (Herbst, 2000). However, some have found that land scarcity does not have an effect on government reach in the countryside (Boone, 2014: 8). Additionally, Ngozi and Makamba do not reflect the country as a whole, which have experienced substantial differences in the land reform process from other parts of the country, such as access to communal land registration offices and support by outside donors for registration projects. Provinces also vary in returned refugees population, the current number of refugees outside the country, demographic pressure and agricultural productivity which may create variation in the effects of land reform. While urban space and repatriates are of crucial importance due to global urbanisation trends and the number of refugees outside Burundi, these remain outside the scope of this paper.

4. Burundian Land Tenure Regime

Institutions governing land in Burundi are divided into three general categories; neocustomary, general formal-legal and specialised formal-legal institutions. Neocustomary includes the local elders, sometimes assisted by NGOs, while the formal-legal courts represent the judiciary system from the local level up to national courts. Specialised formal-legal institutions include the post-Arusha creation of the Commission Nationale de Terres et d'Autres Biens (CNTB) and other associated bodies such as the Cour Special de Terres et d'Autres Biens (CSTB). While these institutions may appear to have distinct mandates, cases may be tried by different actors, arriving at different decisions and without a clear hierarchy in authority (Interview 4; Bisoka, 2013: 40). Furthermore, the two may rely on one another or draw from the rulings of the other institution (Ibid). Within this complex overlap, power relations between actors involved in a

dispute become critical and deeply influence the outcome of land tenure patterns (Bisoka, 2013). The following sections consider these in the categories of neocustomary (4.1) and both general and specialised formal-legal institutions (4.2).

4.1 Women Under Neocustomary Institutions

The present neocustomary institutions concerning land in Burundi remain of central importance due to the high prevalence of land gained through inheritance and the majority of land-related disputes which are first heard at the local level by the local elders, or *bashingantahe* (Kohlagen, 2010). However, very little literature exists on the specific experience of women in Burundi. This paper attempts to understand the current institutional arrangement by constructing a gendered history of Burundi's LTR, often written by early European colonists and compiled later by academics and policymakers, is influenced by social Darwinian ideas, patriarchy, political ideology and understanding of ethnicity. Conscious of these inherent biases, this section is divided into the precolonial and colonial era (4.1.1) and the present (4.1.2).

4.1.1 The Precolonial and Colonial Era

Before alteration in the late colonial period, land and its administration were under the hierarchical control of the king (*mwami*), princes (*baganwa*), local chiefs (*vyariho*) and sub-chiefs (*bakozi b'abakuru*) (Daley, 2007: 45; Lemarchand, 1970). The local elders, *bashingantahe*, were often male Tutsi or Hutu from across the country, with the primary task of settling disputes for a particular hillside, the smallest administrative division of rural society (Dexter and Ntahombeye, 2005; Kohlagen, 2010). This arrangement provided land primarily to male heads of households in the name of the king through the local chiefs and sub-chiefs, where women were excluded from ownership in most cases (Kohlagen, 2010). Some women yielded considerable power in the socially stratified society, where differences between a *muganwa* and a *mutwa* woman would result in unequal power dynamics in favour of the *muganwa* (Daley, 2007: 55).

Early German and later Belgian colonial policy supported a certain level of indirect rule through the customary hierarchical order of society. Deep alteration took place during this period, as both colonisers used violence in order to remove rebellious chiefs and make replacements with administrators loyal to the colonial power (Daley, 2007: 48). Changes to social norms brought deep disruptions to the political and economic life of women and men. German and later Belgian

colonial administrators required men to engage in increasing amounts of forced labour around the country, leaving their own landholdings to work or flee to British territories in search of better conditions (Cochet, 2003: 36). This shifted the responsibility of farming further towards women, who stayed at home during forced labour projects, cultivated the land and raised the children (Ibid). Paradoxically, the colonial powers sought to civilise the Burundian women and men to take on German and Belgian values and norms (Daley, 2007: 53). Domestic training programmes installed by the Belgians taught Burundian women the values of the nuclear family, housekeeping, domestic labour, child rearing and sewing (Hunt, 1990: 469-470). While these domestic training programmes sought to make changes to the familial structures of society, many Burundian women resisted and continued “taboos” such as selling goods in the marketplace or making beer (Daley, 2007: 54). Even with resistance, the Belgian state prevented female participation, leaving the lucrative jobs in the public sector and formal educational opportunities to men. These changes both increased female labour participation in agriculture and systematically removed women from the public sphere, creating a legacy of neocustomary institutions which continue to suppress women as landholders.

The Belgians eventually eliminated the chieftaincy in 1959 in a move to prepare for democracy (Kohlhagen, 2010). This eliminated lower levels of customary land governance, with further disruption during the transition to independence with the elimination of the king. These changes eroded the customary institution, especially removing the relationship between the Burundian peasantry and the elites in charge of land, leaving only the *bashingantahe* to mediate disputes. Without traditional chiefs to decide which family would receive land and the precise locations of allocated land, land grabbing has proliferated especially from widows, single women and land left by refugees (Kohlhagen, 2010: 7). Even recent studies have shown that Burundians continue to refer to the idea of “customary” when dealing with land disputes, recalling the non-existent office of the chieftaincy and the specific former chief which gave a particular parcel to their ancestors (Kohlhagen, 2010).

4.1.2 Neocustomary Institutions In The Present

The social normlessness created in the colonial era perpetuated many challenges for Burundi, where customary institutions were dramatically altered yet remain the predominant institution in land governance today (Kohlhagen, 2010; World Bank, 2014). Furthermore,

neocustomary institutions are localised to each hillside, creating subnational variation and little agreement on norms of customary land rights for women (Kohlagen, 2010: 12). Unchanged from the pre-colonial era, sons inherit land from their father in patrilineal descent (Gahungu and Kazoviyo, 2011: 2). Cases of exclusively female descendants are the rare exception to neocustomary norms of inheritance or family owned land which a female family member may be using but without formal partitions (Ibid; World Bank, 2014: 67). However, women in these cases have been particularly vulnerable to their late husband's family or brothers who claim the land as their own or take it by force (RocheGude et al, 2014). Widows do not inherit land themselves but oversee the inheritance of their male son, or *samuragwa* (World Bank, 2014: 67). Widows are often subject to a family council of her in-laws family, who decide on the outcome of the land (Bigirimana, 2017b: 27). Many widows return to their parent's home, especially those who did not have children with her late husband or who decided to have children with another man after the death of her former husband (Ibid).

Although neocustomary LTR is generally discriminatory towards women, the custom of *igiseke* provides an area of support. This custom obliges brothers to take care of their sisters in times of distress by allowing them to cultivate an area of the brother's land (World Bank, 2014: 67). In some regions, especially in the Imbo region, a father may also give *igiseke* land to his daughters (Bigirimana, 2017b: 25). The length of *igiseke* rights varies from one region to another and even between families, where the land is either permanently or temporarily held by female family members (Ibid).

While many changes occurred to customary elements of land tenure, the *bashingantahe* continue to play a prominent role in Burundian society, and some have suggested strengthening their capacity to resolve local land disputes (Bigirimana, 2017a; USAID, 2016). Before 2004, the law required the *bashingantahe* to first hear cases of land disputes, which changed with the Code of Civil Procedure (Bigirimana, 2017a). Although this legal change occurred, the practice of the *bashingantahe* hearing cases first is very prevalent (World Bank, 2014). Their intervention provides the advantage of locals who have an intimate understanding of the region and the local history, but also some disadvantages. Patrilineal neocustomary norms, lack of training in conflict mediation and familial or political bias pose threats to women's land tenure (Dexter and Ntahombeye, 2005). Some NGOs work with the *bashingantahe* to improve these possible shortcomings, but the decentralised nature of the institution makes widespread changes difficult.

4.2 Formal - Legal Institutions

Germany and Belgium introduced Burundian formal-legal institutions with various changes occurring from independence to the present. Formal-legal institutions concerning land have deep politicisation since their creation and are often used to benefit political insiders at the expense of vulnerable parts of the population such as women, refugees and *Batwa*. The colonial period exhibited a great deal of path dependence and many legal precedents set during this time continue to the present. This section divides the historical progression of formal-legal institutions into the colonial era (4.2.1), independence era (4.2.2) and from the Arusha Accords to the present (4.2.3).

4.2.1 Colonial Era

The colonial period formally recognised three types of LTR; customary, state and private land (Tchatchoua-Djomo, 2018: 6). During the Belgian colonial period, “statutory land tenure was developed and enforced along racial differentiation between the Belgian and other white foreigners, and local/indigenous people” (Ibid). European settlers retained the exclusive ability to hold private land with written titles, while the colonial administration held “state land” and Burundians lived under customary tenure. The colonial era established legal precedence which largely carried forward into independence. Later re-asserted in the 1986 Land Code, colonial administrators only granted full “ownership” to formally registered land with a land title (Kohlhagen, 2011). Customary land only established “private rights,” protecting landholders from the state only if lands were under cultivation, or “in use” (Ibid). Since colonialists were the only segment of the population allowed to have full ownership, this opened up Burundians to exploitation by the state and colonisers who were able to make formal claims to uncultivated land.

4.2.2 Independence Era to Arusha

Aside from the state land transitioning from Belgium to the Burundian government in 1962, the majority of the colonial LTR continued into the independence era. The 1962 Burundian Constitution (Art. 11 and 12) eventually recognised neocustomary land, making registration and titling of neocustomary land for all Burundians legally possible. However, the lack of trust in the

state and the cost of registration, especially for female landowners, kept rural poor from full ownership rights (Tchatchoua-Djomo, 2018: 7). A history of conflict, treatment of land left by refugees and military take-overs aids in the understanding of rural fear to register land, where the capture and manipulation of LTR have exploited the rural poor while codifying land tenure to benefit political and military elite (Wittig, 2017).

After the 1972 massacres, called *ikiza*, Micombero systematised the plundering, seizure and sale of refugee's abandoned property (Wittig, 2017). Later, Bagaza sought to legalise the grabbing of land left by the 1972 caseload of several hundred thousand refugees through Legislative Decree No. 1/21 allowing the allocation of land of fewer than four hectares (Ibid). The 1986 Land Code was largely a copy of the colonial land law and allowed persons to gain customary tenure if they have acquired and peacefully occupied a piece of land for a period over 30 years (Kohlhagen, 2011; Tchatchoua-Djomo, 2018: 7). The 1986 Land Code, under Articles 16 and 17, established National Land Titling Offices in Bujumbura, Gitega, Ngozi and Rumonge (ABELO, 2014: 9; Interview 4)¹. Although the National Land Titling Offices were now located outside Bujumbura, these offices still remained a great distance from many rural landholders, required fees beyond the means of most Burundians and received little budget support from the national government (ABELO, 2014: 9). This resulted in poor service provision and low registration of rural landholdings (Ibid).

4.2.3 From Arusha to the Present

The current decentralisation of land administration came to the forefront of dialogue among policymakers and rival political parties with the Arusha Peace and Reconciliation Agreement, especially concerning Article 8 (2016). This set out particular demands for future Burundian governments to conduct surveys and register rural land. Furthermore, Arusha called for a rural land register, guarantees for returnees to receive compensation and/or indemnification if the recovery of land was impossible, a revision of Burundi's Land Act, and measures to resolve disputes over land (Arusha Peace and Reconciliation Agreement for Burundi). This document gave way to several laws pertaining to land reform and decentralising land administration.

Political debate followed Arusha with national and international attention given to land

¹ The Rumonge office was later closed, see page 18 for the current list of offices and their jurisdiction.

reform. The interim government and several INGOs and UN agencies conducted land tenure studies with findings containing many common points, including absence of agrarian policy, unequal access to land, inadequate means of control of public authority, omnipresence of conflict, advice not to rush reform, to develop a holistic vision in advance of reform and to emphasise conflict resolution (ICG, 2014: 6). In 2005, the current government, Conseil national pour la défense de la démocratie-Forces de défense de la démocratie (CNDD-FDD), won a majority in the elections yet were not part of land reform negotiations up until 2005. Due to this, the CNDD-FDD resisted implementing early strategies discussed by the interim government and sought out INGOs and financial partners uninvolved in previous negotiations, such as the European Union, Swiss Development Cooperation, Global Rights and USAID (Ibid).

The 2005 Communal Law formalised communes as autonomous and decentralised entities managed by communal council members, yet challenges concerning revenue generation have created a great deal of variation in their capacity (World Bank, 2014). In 2010, the Burundian government worked with several technical and financial partners to create the Land Policy Letter. This document laid out five key interventions to 1) renovate the land law, 2) restructuring and modernising the land management institutions, 3) decentralisation of land management, 4) inventory of state-owned land and 5) creating durable solutions for decreasing size of landholdings and for landless persons. Aside from the 5th intervention, the letter is an exact copy of the Malagasy Land Policy Letter adopted shortly before the Burundian Land Policy Letter (ICG, 2014: 7).

In light of the Burundi Land Policy Letter, the 2011 Land Code emerged as part of the first goal. While the colonial regime had massive effects on the creation of neocustomary institutions, until the 2011 Land Code, the formal land regime in Burundi has remained a close copy of its colonial creation (Gahungu and Kazoviyo, 2011). The second and third goals began by decentralising land management to three National Land Titling Offices (Bureaux Des Titres Fonciers Au Niveau National) located in Bujumbura, Ngozi and Gitega (Interview 4; Rohegude et al, 2014: 63). The Bujumbura office serves the provinces of Bujumbura Mairie, Bujumbura Rural, Cibitoke, Bubanza, Mwaro, Muramvya, Rumonge, Bururi and Makamba. The service of Gitega registers the provinces of Karuzi, Gitega, Rutana, Ruyigi, and Cankuzo. The service of Ngozi registers the provinces of Ngozi, Kayanza, Kirundo, and Muyinga (Interview 4). 26 communes of the country's total 129 communes have communal land registration offices (Services Fonciers Communaux or SFC), yet these have been subject to criticism, lack of support and some

which have started are no longer in operation (ABELO, 2014; Rohegude et al, 2014: 63). The SFC are within the framework of the decentralisation of land management as a communal public service responsible for issuing land certificates, viable for proving a person's land rights while not yet registered with the National Land Titling Office (ABELO, 2014). The Land Code specifies that land certificates issued by the SFC are proof of private property rights recognised as a result of regular land appropriation. Only communes with a SFC may issue a certificate, limiting their scope (ABELO, 2014).

Differences in revenue generation and the number of SFC create a great deal of subnational variation concerning local land governance and administration. Ngozi is exceptional in this regard, where all nine communes have operating SFCs (Tchatchoua-Djomo, 2018: 11). This variation is largely created by differences in donor support and revenue structures for land registration, where some provinces have received funding for the creation and operation of SFCs while others have not, as well as different fee structures for land registration and surveying (ICG, 2014: 8; Rohegude et al, 2014: 184; World Bank, 2014). In addition to these decentralised land services, other institutions involved in land reform include the National Land Commission (Commission Foncière Nationale), National Land Programme of Unity in Coordination (L'Unité de Coordination du Programme National Foncier), Interministerial Committee of Land Reform Pilots (Comité Interministériel de Pilotage de la Réforme Foncière) (Rohegude et al, 2014: 62).

In 2006, the Burundian government created the CNTB in light of Arusha with a specific mandate to cases concerning resettling returnees and *sinistrés*, vaguely applied to vulnerable peoples (CNTB, 2011; Fransen, 2012). The CNTB rulings have created a great deal of debate surrounding the idea of "legitimate owners," and who constitutes a vulnerable person (IRRI, 2009). Roughly 70% of CNTB cases concern conflicts with former refugees, with 80% of these cases concerning land (Fransen, 2012). In principle, this court works on the principle of mediation and land sharing, without offering legally binding decisions (Ibid). In cases where mediation is not reached, the case may be turned over to the national court (Ibid). The CNTB mandate was expanded in 2015 by the Burundian government, and a special court created, the Cour Spéciale de Terres et d'Autres Biens (CSTB), to specifically address land disputes (ICG, 2014). While the CNTB rules primarily in cases of refugee land reclamation, many current land occupants have purchased land from the state or from prior occupants and then are required to share land with repatriating refugees (IRRI, 2009). This process further strains already small landholders to

produce enough food for their families or plots subdivided and sold to several families since a refugee fled (Ibid).

5. Land Reform's Effects On Women In Ngozi and Makamba

This section pays particular attention to empirical data from a variety of organisations working in Ngozi and Makamba, supported by academic articles, grey literature, focus groups and interviews. Land reform's effects on women are analysed based on the registration of neocustomary to formal-legal tenure (5.1), the continuation of overlapping neocustomary and formal-legal institutions (5.2), land tenure on purchased land (5.3) and the situation of shared family land (5.4).

5.1 From Neocustomary To Formal-Legal Tenure

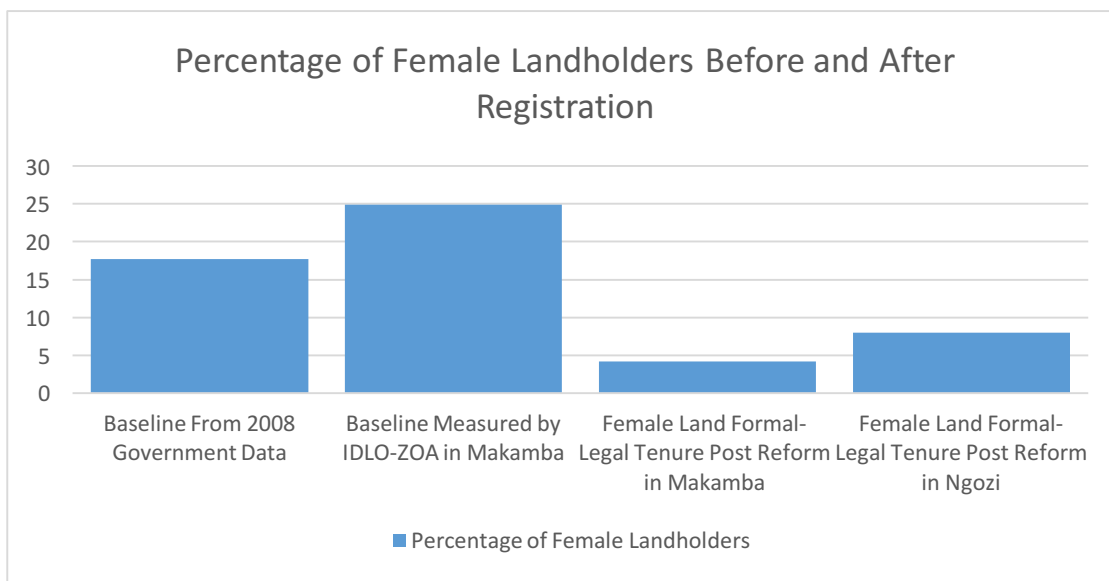


Figure 2 – Author's illustration using Bigirimana 2017b and IDLO 2017 data

Since the first stages of land reform, registration has frequently resulted in a decrease of female land tenure from baseline studies observed under neocustomary tenure arrangements (See Figure 1). Baseline surveys in 2014 by IDLO showed women as the primary rights holders acquired by neocustomary rights to 24.94% of the parcels in Makamba before the registration project, with only 4.18% of these parcels formally registered in the name of a woman by mid-term

of 2016 (IDLO, 2017: 5). This baseline figure is similar to data gathered nationwide in 2008 by a national government survey, which found that of the 80.2% of total landholders, 62.5% are men and 17.7% are women (Bigirimana, 2017b: 6). However, baseline figures of neocustomary ownership may be slightly elevated as they often consider the shared rights of women on family land (Ibid: 5). Early pilot projects in Ngozi started in 2007 supported by the Swiss Development Cooperation brought forth serious concerns for the effects of land reform on women. Four out of five women in these pilots who previously claimed neocustomary rights did not formally record formal documents in their name or have rights mentioned on the full owner's title, such a male family member (IDLO, 2017: 2,3). By the end of 2017, 20,333 applications submitted land certificates to Ngozi SFC in the communes of Ngozi, Kiremba, Marangara, Ruhororo, Tangara and Nyamurenza, yet only 1704 (8%) of these were for women (Bigirimana, 2017b: 38). In Makamba province, the results were consistent with a project supported by ZOA in the municipalities of Mabanda and Vugizo from 2014 to 2016. Considering data collected from several sources in Makamba and Ngozi provinces, women's formal-legal landholdings show a decrease from baseline studies of neocustomary tenure.

Early pilots suggest a lack of awareness of the LTR as a core challenge. A pilot project on the hillside of Rurambira in Makamba which included awareness raising and dialogue groups in support of protecting women's land rights increased the number of women registered and increased landholders from the baseline data, from 24.94% to 45.17% (IDLO, 2017: 5). Misinformation also appeared to be a factor in decreased formal-legal tenure. In a study conducted by AFLB in Ngozi, many women and men believed that women possess neocustomary land rights, especially couples who claimed to have a healthy marriage and those who were not widows (Bigirimana, 2017b: 21). Widows or divorced women better understand the reality, where the land passes to her son upon the death of a husband and the divorced woman finds herself without the land she invested in during the marriage (Ibid). A woman in Ngozi province said that she applied for her land certificate with the intention of separating her own land from her husband's land to shield the property from concubines' control and to secure a good future for her children (Munezero, 2017: 17). Some female respondents said they prefer to keep their certificates in the SFC to prevent their husbands from selling land without their knowledge (Ibid). Researchers have noted especially low female land ownership in areas with low education, young parents with many children and strong land pressure (Bigirimana, 2017b, 35). Evidence in a study conducted in Ngozi province, commune

Kiremba, hillside Ruhama, sub-hill Gongo showed only 13% of 151 land rights belonging to a woman (Ibid). While the pilot project in Rurambira lacks a large-N figure to make broad generalisations, research in Ngozi also supports lack of awareness as an underlying factor for reduced female formal-legal land tenure.

In joint ownership cases with a spouse, the Burundi Family Code provides communal property rights to the couple, yet this is not reflected in the process of registration (IDLO, 2017: 2,3). After two years of registration in tens of thousands of plots in Makamba province in Vugizo and Mabanda, there were no plots registered in joint ownership between a man and a woman. (Ibid: 6). Instead, men often register land without including a mention of their spouse. This poses a number of risks for women, removing women as a necessary part of the decision and negotiating process if their husband sells land. Additionally, this process is actually diminishing women's land tenure in moving from neocustomary ownership instead of strengthening tenure. Women left off of formal documents may also face challenges in utilising their assets as collateral for useful loans, such as agricultural inputs.

Travel costs may also be a factor for lower titling and certification for women. Areas such as Bururi and Kirundo have very low registration and titling and may be partly due to the high cost of travel to the National Land Titling Offices serving these locations and lack of SFC in these provinces (Interview 4). Interviewees in Ngozi revealed that the majority of people certifying land are middle class and live in the urban area of Ngozi city (Tchatchoua-Djomo, 2018: 18). A study in 2010 in the communes of Ruhororo and Marangara in Ngozi province supports this finding, where the majority of the community land services were landowners who owned more land acquired through purchase than inheritance (RocheGude et al, 2014: 68). This group is more likely to have the financial means to travel, pay for registration fees and collect their certificates and/or titles.

5.2 Continued Formal-Legal and Neocustomary Overlap

Land disputes perpetuate in formal-legal and neocustomary institutions due to “overlapping and problematic traditional and legal regulations as well as conflict resolution institutions that lack capacity and efficiency” (Bunte, 2011: 9). This section highlights evidence of this continued overlap and challenges for female landowners concerning clarity in decision making.

A study in Ngozi province revealed many cases are still settled by the *bashingantahe* (Tchatchoua-Djomo, 2018). Female landholders who have registered their land and possess a certificate or title may have a dispute decided upon under neocustomary norms which lack provision for female ownership in the majority of cases (Interview 4). Women have economic incentives to utilise the *bashingantahe* due to the lower costs than the formal-legal courts (Interview 4). Court fees, lawyers and travel costs create financial barriers, where the local elders may only ask for the traditional beer as a charge for the service and each local hillside may host cases (Dexter and Ntahombeye, 2005: 13; Interview 4).

While the rulings of the *bashingantahe* receive a positive reception in most communities, some disputes continue to the local courts (IRRI, 2014; Tchatchoua-Djomo, 2018: 13). In the complex institutional setting of land in Burundi, courts may invoke customary laws in land disputes instead of ruling solely on the basis of formal laws (Tchatchoua-Djomo, 2018: 13). Specifically, this has been found in cases concerning land sharing with female family members, land grabbing from widows by the late husband's family and in cases concerning informal relationships with multiple wives or concubines (Ibid; Rochegude et al, 2014). The vast number of cases in the Burundian court system concern land, often around three-quarters of the yearly total number of cases, further impeding a timely resolution (ABELO, 2014). These findings highlight the interrelated nature of customary and formal legal institutions in Burundi, neither isolated nor with clear jurisdiction.

Although women are legally equal with men according to the Constitution, the laws concerning land are silent in regard to female inheritance, permitting vast differences in legal interpretations (Gahungu and Kazoviyo, 2011; Constitution of Burundi, Article 23). A focus group interview of land rights lawyers at the National Land Titling Office in Bujumbura revealed that no formal-legal text gives clarity between the outcome of a decision by the *bashingantahe* and a court ruling (Interview 4). While these land rights lawyers may have a bias against the *bashingantahe* due to their job and desire for more cases to be settled in the formal-legal system, the evidence presented suggesting a lack of clear hierarchy in decision making appears consistent with other findings.

5.3 Women's Land Tenure On Purchased Land

In addition to the general population living in poverty and Burundi ranking poorly on several development indicators, women often do not have access to the financial means to purchase property and men currently dominate the land market (Bigirimana, 2017b: 19, 55). The vast majority of landholders gain access to land through family succession, with purchase of land being a secondary mode of acquisition (Ibid; Rohegude et al. 2014, 76). However, considering the challenges of customary inheritance norms, purchasing land is one of the most likely ways women can acquire formal-legal land tenure. Focus groups and interviews reveal evidence of discrimination against women in registering purchased land. Recognising certain differences, purchased land refers to both lands acquired from other private parties as well as the state.

A 2013 focus group study in Ngozi province in the communes of Ngozi and Ruhororo and SFC data suggested a number of social factors impeding women from registering land in their name. Focus groups shared how communities and husbands negatively perceive women titling land in their own name (Rohegude et al, 2014: 80). Another focus group conducted by the Association of Female Lawyers of Burundi (AFLB) in Ngozi suggested that women are under social pressure not to represent the household while her husband is alive (Bigirimana, 2017b: 21).

Among this same focus group, there appeared to be a false perception that formal documents such as land certificates and titles only permit one name, despite both offering a place for multiple names and specific lines for co-owners or co-heirs (Bigirimana, 2017b: 21). Given that the group perception that the certificate can only have a single name, the man receives priority. Family Code Article 122 supports this view, which stipulates the man as the legal head of the household (Ibid). One interviewee commented on the role of money in a traditional marriage, "Women do not have money. Even when a woman manages to acquire some money, she does not decide on its use alone. The wife's money is managed by the family, which is not the case for the husband's money" (Ibid: 55). In cases where women purchase land themselves, it is often subsequently registered by her husband and solely in his name (Ibid: 19). While economic factors place constraints on women in purchasing land, social pressure also keeps women from registering this land in their own name.

Unrecorded land transactions on registered parcels also pose challenges to the legitimacy of formal documents. IDLO findings in Makamba found that local SFCs had not registered a single land transaction despite evidence that a significant amount of transactions had occurred in

registered areas of the province (IDLO 2017, 5). These findings show that a quarter to one-third of the registered parcels would be out of date in ten years' time given the current rate of unrecorded transactions (Ibid).

5.4 Women On Family Land

Women find themselves in a complex position when it comes to undivided family land. Based on IDLO monitoring data in Makamba province, 60% of land disputes concern intra-family disputes, with the majority of these cases over undivided family land (IDLO, 2017: 10). While it is difficult to make causal relations between land and conflict, findings in Makamba province in Mabanda and Vugizo suggest a steep rise of disputes in association with registration campaigns (IDLO, 2017: 4). Across 44,127 plots registered by December 2016, researchers observed an increase of 50-100% in disputes, with a fourfold increase in land disputes in local courts (Ibid). Baseline studies in Mabanda and Vugizo communes of Mabanda province suggest intra-family disputes are most likely to erupt into violence, supported by International Crisis Group findings (Ibid; ICG, 2014: 3). Land disputes constitute over three-quarters of the total number of court cases each year and many of these cases between families also cite associated violent conflict, arson and murder (IDLO, 2017: 2; Van Leeuwen and Van Der Haar, 2015).

In addition to violent conflict, shared family land places women in a vulnerable position due to their lack of registered secondary rights. Since there are costs in registering family land, focus groups in Mabanda and Vugizo shared how families weight the price of registration against perceived benefits, where these perceived benefits are low due to the land remaining in the family despite this being the most likely area of dispute (IDLO, 2017: 11). These focus groups also shared negative sentiments toward paying for the division of family land (Ibid). The division of a single family plot into multiple plots becomes costly for a single family, where the costs of registration are multiplied by the number of divisions.

Among a questionnaire provided to 120 people with 53.3% female participation in Ngozi province in the communes of Ngozi, Ruhororo, Marangara, Kiremba, Nyamurenza and Tangara, 90.5% of married women and 72.9% of divorced women who received land through their own family's inheritance stated that they received land through the custom of *igiseke* (Bigirimana, 2017b: 25). Brothers are not always willing, despite custom, to distribute *igiseke* land to their

sisters. When perceived land pressure is high and the division of land occurs on family farms, brothers tend to neglect land provision to their sisters (Ibid: 26).

6. Analysis

The Burundian government and international donors conduct land reform with specific mention of improving LTR for women, yet evidence compiled from various sources suggest that land reform provides mixed results for female landholders. Interviews and literature reviewed in Section Five highlight the complex social, economic and political nature of land tenure in Burundi. Positively, the decentralisation of land administration has increased the number of SFC in some provinces, subsequently decreasing travel costs associated with registering land. These costs disproportionately affect women who face challenges in leaving dependent children, household tasks and accessing necessary funds.

Evidence from the pilot hillside in Rurambira also suggests the effectiveness of coupling registration with awareness campaigns to increase women's land tenure. Registration for women decreased in areas of low education, young parents with many children and strong land pressure (Bigirimana, 2017b: 35). While education for girls is improving in Burundi, women are more likely to be illiterate and often less educated, thus less likely to have awareness of legal rights (UNICEF, 2018). Elsewhere in the Sub-Saharan Africa, awareness raising campaigns and variation in land registration methods have been an important part of increasing female land tenure in the process of land reform (Holden et al, 2010). Awareness campaigns in Rwanda and Uganda increased the likelihood of married women claiming land rights, providing secondary inheritance rights to daughters and improved understanding of relevant land laws (Ali et al, 2011; Deininger et al, 2008; Santos et al, 2012). This evidence supports holistic policies which include awareness campaigns as an integral part of land registration.

Women also face a number of obstacles in the land reform process, especially concerning institutional overlap, accumulating means to purchase land, registering land in their own name and interfamily disputes on succession. Formal-legal court rulings based on neocustomary norms stifle female land rights, as well as the large number of cases resolved by the *bashingantahe*. Land acquisition through the market allows women with access to financial resources to avoid neocustomary norms of inheritance, yet evidence shows social norms constrain women from including their name on formal documents. Registration and formal-legal ownership on undivided

family land, a crucial asset to rural households, limit the effectiveness of reform where formal documents do not reflect neocustomary rights.

Evidence presented in this article provides support for the theoretical framework of this paper. Across tens of thousands of registered parcels in Makamba and Ngozi, women were left off of formal documents in the registration process (IDLO, 2017). The registration did not codify or improve tenure security identified as a baseline under neocustomary norms but reduced formal female land tenure. This systematically exploits women as primary and secondary landholders while providing their husbands or male relatives increased intra-household bargaining power and increased bargaining power with both customary and formal-legal institutions in land disputes, especially contestation over inheritance.

Findings suggest that land reform, at least initially, increases the number of border conflicts which places women in a vulnerable position of a power struggle against their male neighbours and relatives (IDLO, 2017: 4). Women are particularly vulnerable to gender-based violence over land, considering a history of violence against women in Burundi and in the Great Lakes Region broadly (Daley, 2007; Holden et al, 2010). A lack of hierarchy in authority leads to lengthy disputes instead of a final, clear resolution (Bisoka, 2013; Leeuwen and Haartsen, 2005). From the perspective of New Institutional Economics (De Soto, 1989; 2000; North, 1990), insecure tenure created by institutional overlap reduces incentives to invest. Years may pass without a decision, reducing the level of productivity possible compared to an expedient decision.

7. Conclusion

This paper makes two academic contributions to the existing literature. The first contribution is providing a feminist-institutional perspective on land reform in Burundi from the pre-colonial period to the present. While other articles have made secondary mention concerning the gendered effects of land reform in Burundi, this article brings a primary focus to female land tenure in Burundi while also offering new research and a compilation of authorship from academic sources and grey literature. Findings in both Ngozi and Makamba suggest that land registration has the potential to reduce land tenure for women by leaving their names off of formal documents. Evidence from these provinces shows relevant factors to include negative social perception, costs associated with the process, lack of awareness and manipulation by more powerful actors. This creates a number of future risks for female property owners if neocustomary tenure is eliminated

or no longer recognised, as has been the case for other countries. A reduction of female formal land tenure contradicts the stated objective of many governments and donors and brings into question the benefits of supporting reform without more holistic policies. Second, this article proposes a theoretical model, analysing land reform as a critical juncture in the context of institutional path dependence. Land reform presents an opportunity for the reassertion of unequal power dynamics at the critical juncture of registration and titling.

Lastly, this article suggests a number of areas for future research. The lack of statistical data necessary for analysis of land reform to draw sound quantitative results requires further research, especially of provinces which have received less attention from international donors. Provinces with lower registration also provide an interesting area of future investigation where case within a case comparison against registered provinces may yield interesting points of analysis. Do women enjoy improved land security and productivity over the long-term in unregistered provinces compared to registered provinces? Additionally, the treatment of women on state land and communal land, such as forests and marshlands, provide important areas for future study. Lastly, the specific challenges of Batwa women, historically hunter-gatherers and largely excluded from landholdings, are unique and should be explored to prevent exploitation to a vulnerable part of the population.

8. Bibliography

References

- ABELO. (2014) “Le guichet foncier, service viable de l’Administration Communale au Burundi?” Association Burundaise Des Elus Locaux. Bujumbura. November 2014.
- Acemoglu, D., Johnson, S. & Robinson, J.A., 2001. The Colonial Origins of Comparative Development: An Empirical Investigation. *The American Economic Review*, 91(5), pp.1369–1401.
- Agarwal, B. (1997) ““Bargaining” and Gender Relations: Within and Beyond the Household.” *Feminist Economics*, 3(1), pp.1–51.
- Ali, D.A, Deininger, K. and Goldstein, M. (2011) “Environmental and Gender Impacts of Land Tenure Regularization in Africa: Pilot Evidence From Rwanda.” World Bank Policy Research Working Paper Series. Washington D.C. World Bank.
- Anying, I.W. & Gausset, Q., (2017) “Gender and forum shopping in land conflict resolution in Northern Uganda.” *The Journal of Legal Pluralism and Unofficial Law*, 49(3), pp.353–372.
- Arusha Peace and Reconciliation Agreement for Burundi. 2018. https://www.brookings.edu/wp-content/uploads/2016/07/Burundi_Arusha-Peace-and-Reconciliation-Agreement-for-Burundi.pdf. [Accessed April 12th, 2018].
- Baltissen, G. and Van Der Haar, G. (2016) “Governing Commercial Pressures on Land In Africa: What Is the Role of Local Government.” December 2016. LANDac Working Paper 01.
- Bassett, T.J. Blanc-Pamard, M. and Boutrais, J. (2007) “Constructing Locality: The Terroir Approach in West Africa” *Africa*, 77 (1) pp. 104-129.
- Berry, S. (1993) *No Condition Is Permanent: The Social Dynamics Of Agrarian Change In Sub-Saharan Africa*. Madison, University of Wisconsin Press.
- Bigirimana, J. (2017a) “Burundi: A Justice System Out of Touch With Social Realities.” *World Policy Journal*. July 2017.

- Bigirimana, J. (2017b) “De La Prise En Compte Des Droits Fonciers Des Femmes Dans Le Processus De Securisation Fonciere A Ngozi.” Association des Femmes Juristes du Burundi et DDC. Décembre.
- Bisoka, A. (2013) “Burundi: résistances paysannes à l’accaparement des terres” *Alternatives Sud*, Vol. 20-2013/ 35.
- Boone, C. (2014) *Property and Political Order in Africa: Land Rights and the Structure of Politics*. Cambridge University Press
- Boone, C, Dyzenhaus A, et al. (2016) “Land Politics under Kenya's New Constitution: Counties, Devolution, and the National Land Commission.” LSE International Development Working Paper Series No. 16-178.
- Brenner R. (1976) “Agrarian Class Structure and Economic Development in Pre-Industrial Europe.” In Aston T. H. and Philpin C. H. E., *The Brenner Debate: Agrarian Class Structure And Economic Development In Pre-Industrial Europe*. Cambridge: Cambridge University Press.
- Bunte, T. and Monnier, L. (2011) “Mediating Land Conflict in Burundi.” ACCORD and Sida. <http://www.accord.org.za/wp-content/uploads/2011/09/ACCORD-Report-Mediating-land-conflict-in-Burundi-English.pdf>. [Accessed September 12th, 2017]
- Burns, Nancy (2005), ‘Finding Gender’, *Politics & Gender*, 1: 1, 137–141.
- Burundi. (1986) Land Code. BOB number 7 to 9/86. Bujumbura. Republic of Burundi.
- Burundi. (2008) Land Policy Letter. Bujumbura: Ministry of the Environment, Planning and Public Works of the Republic of Burundi.
- Capoccia, G. and D. Kelemen. (2007) “The Study of Critical Junctures: Theory, Narrative and Counterfactuals in Institutional Analysis.” *World Politics* 59 (3): 341–369.
- CNTB. (2011) “Janvier 2011 Portant Missions, Composition, Organisation, et Fonctionnement De La Commission Nationale Des Terres Et Autres Biens.” <http://www.assemblee.bi/IMG/pdf/CNTB.pdf>

- Cochet, H. (2003) "A Half Century of Agrarian Crisis in Burundi (1890-1945): The Incapacity of the Colonial Administration in Managing the Agrarian Crisis of the Late Eighteen-Hundreds." *African Economic History*. No. 31 (2003), pp. 19-42 University of Wisconsin-Madison.
- Collier, D. (1993) "The Comparative Method." in *Political Science: The State of the Discipline II*. Washington, D.C. American Political Science Association.
- Crenshaw, K.W. (1989) "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics." *University of Chicago Legal Forum* 1989: 139–167.
- David, P. (1994) "Why Are Institutions the 'Carriers of History'? Path Dependence and the Evolution of Conventions, Organizations and Institutions." *Structural Change and Economic Dynamics* 5 (2), 205–220.
- Deininger, K, Ali, D.A. and Yamani, T. (2008) "Legal Knowledge and Economic Development: The Case of Land Rights in Uganda." *Land Economics*. 84 (4): 593-619.
- De Soto, H. (1989) *The Other Path: The Economic Answer to Terrorism*, New York: Basic Books
- De Soto, H. (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. Bantam Press, London.
- Dexter, T. and Ntahombeye, P. (2005) "The Role of Informal Justice Systems in Fostering the Rule of Law in Post-Conflict Situations: The Case of Burundi." Centre for Humanitarian Dialogue. July 2005 Report.
- Doss, C.R. (1996) "Testing Among Models of Intrahousehold Resource Allocation." *World Development* 24(10): 1597–1609.
- Faguet, J., & Pöschl, C. (2015). *Is Decentralization Good For Development? : Perspectives From Academics And Policy Makers*. Oxford University Press.
- Fiddian-Qasmiyeh, E, G. Loescher, K. Long, and N. Sigona. (2014) *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press.
- Folbre, N. (1994) *Who Takes Care of the Kids? Gender and the Structures of Constraint*. London: Routledge.

- Foucault, M. (1991) *Discipline and Punish: The Birth Of A Prison*. London, Penguin.
- Fraser, N. (1989) *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory*. Minneapolis. University of Minnesota Press.
- Fransen, S. and Kuschminder, K. (2012) "Back to the land: the long-term challenges of refugee return and reintegration in Burundi." *New Issues in Refugee Research*. UNHCR.
- Fransen, S. (2015) "The Socio-Economic Sustainability of Refugee Return: Insights from Burundi." *Population Space Place*, doi: [10.1002/psp.1976](https://doi.org/10.1002/psp.1976).
- Freire, P. (2001) *Pedagogy of the Oppressed* 30th anniversary. New York: Continuum.
- Gahungu, P. and G. Kazoviyo. (2011) "The Issue of Inheritance for Women." ITEKA. March.
- Gerring, J. (2007) *Case Study Research: Principles and Practices*. Cambridge.
- Haddad, L, J. Hoddinott and H. Alderman. (1994) "Intrahousehold Resource Allocation: An Overview," Policy Research Working Paper 1255, The World Bank, Washington, DC, February.
- Herbst, J. (2000) *States and Power in Africa*. Princeton University Press.
- Rochegeude, A, P. Thinon, F. Ferrari, D. Gihugu, D. Nshimirimana, and D. Mulingi (2014) *Rencontres Foncières*. Bujumbura 3-5 Juin 2014. Coopération Swiss and Editions IWACU.
- Hoddinott, J. & Haddad, L. (1995) "Does Female Income-Share Influence Household Economic Expenditure? Evidence From Cote d'Ivoire." *Oxford Buttetin of Economics and Statistics*. 57 (1): 77-96.
- Holden, S. Deininger, K. and Ghebru, H. (2010) "Impact Of Land Registration And Certification On Land Border Conflicts In Ethiopia." World Bank. Washington, D.C.
- Holden, S. and Otsuka, K. (2014) "The Roles Of Land Tenure Reforms And Land Markets In The Context Of Population Growth And Land Use Intensification In Africa." *Food Policy*. Issue 48. Pgs 88-97.

- Hunt, N. (1990) "Domesticity and Colonialism in Belgian Africa: Usumbura's Foyer Social, 1946-1960." *Signs; Journal of Women in Culture and Society*. 15, 31: 447-74.
- ICG. (2014) "Fields of Bitterness." International Crisis Group.
<https://www.crisisgroup.org/africa/central-africa/burundi/fields-bitterness-ii-restitution-and-reconciliation-burundi>
- IDLO (2017) "Actions To Strengthen And Sustain The Outcomes Of The Land Tenure Registration Project In Mabanda And Vugizo." International Development Law Organisation. Unpublished. 24 August.
- IRRI. (2009) "Two People Cannot Wear The Same Pair of Shoes." International Refugee Research Initiative. Citizenship and Forced Migration in the Great Lakes Region. Working Paper No. 2 November 2009.
- Juenger, F. K. (1988) "Forum Shopping, Domestic and International." *Tulane Law Review* 63: 553– 572.
- Kabeer, N. (2016) "Gender Equality, Economic Growth, and Women's Agency: the "Endless Variety" and "Monotonous Similarity" of Patriarchal Constraints." *Feminist Economics*. Vol 22. (1).
- Kenny, M. (2014) A Feminist Institutional Approach. *Politics & Gender*, 10(4), pp. 679-684.
- Kevane, M. (2014) *Women and Development in Africa: How Gender Works*. London. Lynne Rienner Publishers.
- Khan M. (2009) "Learning, Technology Acquisition and Governance Challenges in Developing Countries." Research Paper Series on Governance for Growth. School of Oriental and African Studies. London: University of London.
- Kibreab, G. (2014) "Forced Migration In The Great Lakes And Horn Of Africa." In *The Oxford Handbook of Refugee and Forced Migration Studies*. eds. F.Q. Elena, G. Loescher, K. Long, and N. Sigona. Oxford: Oxford University Press.
- Kohlhagen, D. (2010a) "Vers Un Nouveau Code Foncier Au Burundi ?" in S. Marysse, F. Reyntjens, and S. Vandeginste (eds) *L'Afrique des Grands Lacs, Annuaire 2009-2010.*, Paris: L'Harmattan.

- Kohlhagen, D. (2010b) “Le bushingantahe au Burundi. Transformations et réminiscences d’un concept judiciaire ancien”, in: LAJP (ed.), *Cahiers d’Anthropologie du droit* 2009. Dire le droit, rendre la justice, Paris: Karthala.
- Kohlhagen, D. (2011) “Land Reform In Burundi : Waiting For Change After Twenty Years Of Fruitless Debate.” European Conference of African Studies (ECAS) in Uppsala.
- Krook, M., & Mackay, F. (2011) “Gender, Politics and Institutions : Towards a Feminist Institutionalism.” *Gender and Politics*. Basingstoke ; New York: Palgrave Macmillan.
- Mamdani, M. (1996) *Citizen and Subject: Africa and the Legacy of late Colonialism*. Princeton.
- Meinzen-Dick, R. and Pradham, R. (2002) “Legal Pluralism and Dynamic Property Rights”. CAPRI Working Paper, No. 22. International Food Policy Research Institute, Washington D.C
- Leeuwen, M. & Haartsen, L. (2005) “Land Disputes and Local Conflict Resolution Mechanisms in Burundi.” CED-CARITAS Burundi. Bujumbura.
- Lemarchand, R. (1970) *Rwanda and Burundi*. Praeger Publishers.
- Lipton, M. (2009) *Land Reform In Developing Countries: Property Rights and Property Wrongs*. London: Routledge.
- Mahoney, J. (2000) “Path Dependence in Historical Sociology.” *Theory and Society* 29 (4): 507–548.
- Munezero, C. (2017) “Programme D'appui A La Gestion Fonciere Au Burundi Etude Sur L'importance Attachee Par Les Usagers Au Certificat Foncier Et A La Securite Fonciere Incarnee Par La Reconnaissance Communautaire Des Droits Fonciers.” Association des Femmes Juristes du Burundi et Confédération Suiss. Decembre Rapport Final.
- Ngaruku, F. & Nkurunziza, J. (2000) “An Economic Interpretation of Conflict in Burundi.” *Journal Of African Economies*, Volume 9, Number 3, Pp. 370–409
- Niyonzima, D. and L. Fendall. (2001) *Unlocking Horns: Forgiveness and Reconciliation in Burundi*. Barclay Press.
- North, D. (1991) “Institutions.” *The Journal of Economic Perspectives*. Vol. 5, No. 1, pp. 97-112
- Oates, W. (1998) *The Economics of Fiscal Federalism and Local Finance* (The International library of critical writings in economics ; 88). Northampton, MA: Edward Elgar.

- O'Connor, P. (2018) "A Broader Development Perspective: Economic and Political Drivers of Worldwide Land Registration Reform." in Goymour, A., Watterson, Stephen & Dixon, Martin, *New Perspectives On Land Registration: Contemporary Problems And Solutions*.
- Phillips, A. (1998) *Feminism and Politics*. Oxford: Oxford University Press.
- Pierson, P. (2000) "Increasing Returns, Path Dependence, and the Study of Politics." *The American Political Science Review* 94 (2): 251–268.
- Quisumbing, A. (2003) "What Have We Learned From Research On Intrahousehold Allocation." In *Household Decision, Gender, and Development: A Synthesis of Recent Research*. International Food Policy Research Institute. Washington, D.C.
- Randall, V. (2002) "Feminism" in D. Marsh and G. Stoker (eds), *Theory and Methods in Political Science*, Basingstoke: Palgrave, pp. 109–130.
- République du Burundi (1986) Loi Portant Code Foncier du Burundi. Titre II, Chapter I, Section I, Article 29.
- Rodrik, D. (2000) "Trade Policy Reform as Institutional Reform" in *Developing Countries and the Next Round of WTO Negotiations* edited by B. HoekmanSelvetti, C. 2012. DfID
- Rondinelli, D. A., G. S. Cheema and J. Nellis. (1983) "Decentralisation in Developing Countries: A Review of Recent Experience." World Bank Staff Working Paper No.581. Washington, DC: World Bank.
- Santos, F, Fletschner, D, and Daconto, G. (2012) "Enhancing Inclusiveness of Rwanda's Land Tenure Regularization Program: Initial Impacts of an Awareness Raising Pilot". Mimeo. Annual World Bank Conference on Land and Poverty, Washington, D.C.
- Stefansson, A. (2004) "Sarajevo Suffering: Homecoming and the Hierarchy of Homeland Hardship". In: Markowitz, F. & Stefansson, A. *Homecomings: Unsettling Paths of Return*. USA: Lexington Books.
- Strauss, J. and D. Thomas. (1995) "Human Resources: Empirical Models of Household and Family Decisions," in J. Behrman and T. N. Srinivasan (eds.) *Handbook of Development Economics*, Vol. III, pp. 1885–2023. Oxford: Elsevier Science.

- Tchatchoua-Djomo, R. (2018) “Improving local land governance? Exploring the linkages between land governance reforms, institutional pluralism and tenure security in Burundi.” *The Journal of Legal Pluralism and Unofficial Law*. Routledge.
- Teddle, C. & Tashakkori, A. (2009) “The Inference Process In Mixed Methods Research.” In *Foundations Of Mixed Methods Research: Integrating Quantitative And Qualitative Approaches In The Social And Behavioral Sciences*. pp. 285–314. Thousand Oaks, CA: Sage.
- Theron, J. (2009) “Resolving Land Disputes In Burundi.” *Conflict Trends*. Issue 1. ACCORD.
- Treisman, D. (2007) *The Architecture Of Government : Rethinking Political Decentralization*, Cambridge ; New York: Cambridge University Press.
- UNICEF. (2018) “Burundi Statistics.” United Nations International Children’s Emergency Fund. https://www.unicef.org/infobycountry/burundi_statistics.html
- USAID. (1986) “Land Tenure Profile: Burundi” Land Tenure Systems. http://pdf.usaid.gov/pdf_docs/Pnaba151.pdf.
- USAID. (2016) “Evaluations and Research.” Land Tenure Security. <https://www.land-links.org/evaluations-and-research/>.
- Van Leeuwen, M. and Van Der Haar, G. (2015) “Theorizing the Land–Violent Conflict Nexus.” *World Development*. Vol. 78, pp. 94–104.
- Watt, N. (2008) *Burundi: The Biography of a Small African Country*. Hurst.
- Whitehead, A. (1979) “Some Preliminary Notes on the Continuing Subordination of Women.” *IDS Bulletin* 10(3): 10–13.
- Whytock, C. A. (2010) “The Evolving Forum Shopping System.” *Cornell Law Review* 96: 481–534.
- Wily, L. (2003) *Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa*. IIED, London.
- Wittig, K. (2017) “C’est comme ça que cela pourrait recommencer” : L’épineuse question foncière au Burundi. *Canadian Journal of African Studies / Revue canadienne des études africaines*, 51(1), pp.1–22.

Wood, E. (2002) *The Origin of Capitalism: A Longer View*. London: Verso.

Yin, R. (2003) *Case Study Research: Design and Methods*. London: Sage.

9. Appendix

9.1 List of Interviews

Number	Interviewee Description	Date	Country	Venue	Language
1	NGO Country Director	December 15, 2017	Burundi	Bujumbura	English
2	INGO Country Director	December 15, 2017	Burundi	Bujumbura	English
3	NGO Regional Coordinator	December 19, 2017	Burundi	Bujumbura	English
4	Focus Group of Land Rights Lawyers at National Land Titling Office	April 4, 2018	Burundi	Bujumbura	French
5	Burundian Lawyer	July 31, 2018	Burundi	Bujumbura	French

9.2 Interview 4 - Focus Group Questions To Guide Conversation

1. Are there statistics available regarding land titling in Burundi?
 - If yes, are these available online or published somewhere I could review them?
2. Considering recent support for land titling and certification in Ngozi and Makamba, are other provinces also carrying out land registration/titling programmes?
 - If yes, where are these?
3. Which province (s) are the least registered/titled?
4. Under customary land tenure in Burundi, are women able to hold land?
5. Are women being included on land titles when there is provision to have more than one name on the title, or are other secondary rights holders such as first born males included on the title instead?
6. What are the main challenges women face in land registration?
7. How do land lawyers handle overlap in customary and legal rules for land?
 - Is there priority for customary or legal?
 - Can a person choose where they want to take a case; either to the bashingantahe or local court?
8. Between the customary and legal courts, which method is the least expensive in resolving cases?
9. Are men and/or women able to use land titles as collateral for loans?
10. Are there other issues on land reform you see as very important?